

**R.D. # 08-10
New York City, N.Y.**

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22**

GREY LINE NEW YORK TOURS, INC.¹

Employer

and

CASE 22-RC-13123

**TRANSPORT WORKERS UNION,
AFL-CIO, LOCAL 225²**

Petitioner

DECISION AND DIRECTION OF ELECTION

I. INTRODUCTION

The Petitioner, Transport Workers Union, AFL-CIO, Local 225, filed a petition seeking to represent a unit of about 19 full-time and regular part-time bus dispatchers employed by the Employer, Grey Line New York Tours, Inc., but excluding tour guide dispatchers and all other employees. The Employer asserts that bus dispatchers are supervisors within the meaning of Section 2(11) of the Act. Alternatively, if bus dispatchers are not found to be supervisors, the Employer contends that four tour guide dispatchers must be included in the unit as well.

¹ The name of the Employer appears as amended at the hearing.

² The name of this Petitioner appears as amended at the hearing.

For the reasons described below, I find that bus dispatchers are not supervisors and that tour guide dispatchers must be included in the unit.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding,³ I find:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.⁴

3. The record reflects, and I find, that the Petitioner, Transport Workers Union, AFL-CIO, Local 225, represents certain employees of the Employer, Grey Line New York Tours, Inc., and is a labor organization within the meaning of Section 2(5) of the Act.⁵

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and 2(7) of the Act.⁶

³ Briefs filed by the Petitioner and the Employer have been duly considered. Thereafter, the Employer filed a letter in reply to the Petitioner's brief and the Petitioner filed a response to the reply letter. Pursuant to Section 102.67(a) of the Board's Rules and Regulations, a reply brief may not be filed except upon special leave of the Regional Director. As I did not grant such special leave, I have not considered either the Employer's letter in reply to the Petitioner's brief or the Petitioner's reply letter.

⁴ Grey Line New York Tours, Inc., is a New York Corporation engaged in the provision of sightseeing tour services from locations in New York, New York and its depot in Hoboken, New Jersey.

⁵ The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

⁶ The parties stipulated and I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

5. The appropriate unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act is as follows:

All full-time and regular part-time bus dispatchers and tour guide dispatchers employed by the Employer in New York City, but excluding all office clerical employees, professional employees, guards, managerial employees, supervisors, as defined by the Act, and all other employees.

II. FACTS

The Petitioner is in the business of providing double-decker bus sight-seeing tours in New York City.⁷ The Petitioner operates buses in three loops during the day: The downtown, uptown and Brooklyn loops. The downtown and uptown loops begin in Times Square while the Brooklyn loop begins at the South Street Seaport. During the day, customers may “hop-on/hop-off” the buses as they stop at various tourist attractions. The Petitioner also operates a night tour through Manhattan and Brooklyn. Each bus has a driver and a tour guide who provides information to the customers.

Vice President James Murphy oversees the Employer’s day-to-day operations.⁸ Operations Manager Juan Gonzalez works with Assistant Operations Managers Christopher McCoy and Robert Cooper in New York City. They mostly work inside the Employer’s two Times Square facilities. Besides Murphy, Gonzalez is the highest ranking manager in charge of the overall operations. The Employer also employs an Operations Manager, Anibal Munoz, and four Operations Supervisors at the main depot

⁷ The Employer is part of a fairly complicated corporate structure with other companies that was described at length in a Decision and Order that issued on June 28, 2010 in *Twin America, LLC* (Case 22-CA-13115).

⁸ Murphy was the only witness called by the Employer to testify. The Union called bus dispatcher Alicia Salmon and former tour guide dispatcher (now tour guide) James Gildea.

in Hoboken. Munoz and the Operations Supervisors are responsible for setting up runs and dispatching drivers to perform them. The Tour Guide Manager is Eva Lee.⁹

Murphy testified that the night tour is run by Cooper with the assistance of Steven Toro, Akm Khalique and Michael Watson.¹⁰ Murphy also appeared to testify that one day-time dispatcher is designated for each loop as a lead dispatcher. The record does not indicate how this designation is made or how often. Although the record is sparse, as discussed below, Murphy suggested that night and lead dispatchers possess more authority than other dispatchers.

The bus drivers are employed by International Bus Services, Inc. (“IBS”) and are represented by Teamsters Local 966. The tour guides and ticket agents are employed by the Employer and are represented by the Petitioner in a separate unit. The Petitioner has a roster of about 170 drivers and 190 tour guides. Murphy negotiated and administers both of the collective bargaining agreements.¹¹

Most drivers report to Hoboken and drive their buses into New York City, while some drivers get their buses at locations on the street. Tour guides report to the Times Square Visitor Center in New York City. The route assignments of bus drivers and tour

⁹ The Petitioner does not seek to include Gonzalez, McCoy, Cooper, Munoz, Lee or the Operations Supervisors in the unit and the parties stipulated to the supervisory status of these individuals, except Lee. The record does not reflect the specific supervisory authority of the stipulated supervisors. However, neither party seeks to include them or Lee. Accordingly, Operations Managers, Assistant Operations Managers, Operations Supervisors and the Tour Guide Manager will be excluded from the unit found appropriate herein.

¹⁰ The Union seeks to include Toro, Khalique and Watson in the bargaining unit of dispatchers while the Employer seeks to exclude them. Employer Exhibit 4 was prepared for this proceeding and describes Toro and Khalique as Assistant Night Operations Managers. Employer Exhibit 4 identifies Watson and other petitioned-for employees as “Dispatcher/Supervisors”. The record does not indicate that these titles are used at work. For convenience, Toro, Khalique and Watson are referred to collectively herein as “night dispatchers” and are found to be included in the unit found appropriate herein.

¹¹ The current collective bargaining agreement that covers IBS drivers is effective until January 31, 2011. The current collective bargaining agreement covering ticket takers and tour guides is effective until November 15, 2011.

guides are governed by seniority and bid systems as defined in their respective contracts. Most drivers and tour guides bid regular routes that are scheduled from time-to-time by management. Management also designates “extra board” drivers and tour guides on a daily basis to cover absences or to perform excess work. “Extra board” employees are guaranteed four hours of pay if they are called into work.¹²

The Employer employs 19 bus dispatchers (including the night dispatchers) and four tour guide dispatchers.¹³ Bus dispatchers generally work on the street.¹⁴ Tour guide dispatchers work inside the Visitor Center or on the street. Dispatchers play no part in the bid process or the designation of daily extra board employees. Dispatchers are expected to follow bids and assign “extra board” personnel in order of seniority. Murphy testified that, in a rush, a dispatcher might assign an available employee out of order, but such an assignment may be grieved. The record does not indicate how often this occurs.

Murphy testified that bus dispatchers “manage the flow” of buses by, for example, requesting or releasing buses to locations where customers are numerous, increasing the frequency of runs, rerouting buses to avoid traffic obstructions and consolidating customers from multiple buses onto a single bus. Murphy testified that dispatchers also have independent authority to send employees home with pay when work is slow and retain employees for mandatory overtime or deny them breaks when

¹² Gildea testified that on a “couple of occasions,” as a former tour guide dispatcher, he called extra board tour guides at home. Apparently, tour guide dispatchers were provided with a daily list of extra board tour guides that contained their telephone numbers. Otherwise, extra board employees simply report in place of a regular bid employee or report to a standby location in anticipation of work.

¹³ Where “dispatchers” are referenced herein, the reference is to bus dispatchers and tour guide dispatchers collectively.

¹⁴ Bus dispatchers are also referred to on the record as “street dispatchers.”

work is busy.¹⁵ According to Murphy, dispatchers stay in regular communication with each other to coordinate their efforts and that final operational/personnel decisions are made by lead dispatchers. Salmon testified that she may direct a driver to take an empty bus to a busier location. Otherwise, however, Salmon testified that she must notify and get direction from Gonzalez when a situation might require an operational or personnel adjustment. Salmon made no mention of lead dispatchers.

Tour guide dispatchers are primarily responsible for working with the bus dispatchers to get the right tour guides on the right buses with breaks in between. The Employer began using tour guides dispatchers because tour guides are so numerous. However, Salmon testified that, in her capacity as bus dispatcher, she still puts tour guides on buses at certain locations. The record also indicates that some individuals have worked at different times as bus and tour guide dispatchers. The record does not indicate how many individuals have transferred between those positions.

Murphy testified that dispatchers are the Employer's "eyes and ears" on the street and initiate discipline. The Employer introduced into evidence 22 documents which were identified by Murphy as "write up form[s] that will be filled out by a dispatcher, a tour guide, or a ticket seller, or a driver." Murphy later testified that write-up forms are only made available to "supervisors," and the form does contain a line at the bottom for "Signature of Supervisor." Gildea testified that anyone may write someone up, including employees (e.g., a driver may write up a tour guide). The write-up form has no title indicating that it is used for disciplinary purposes. However, it

¹⁵ Salmon testified that drivers tell her when they want to go to lunch, but that she has never refused any driver a lunch break.

contains boxes to be checked for different types of misconduct and a section for describing the “Course of Action Taken.”

Dispatchers do not carry write-up forms on their person. Rather, they must call Operations in Hoboken to have the form filled out and/or provided to them. In this regard, Murphy testified that a dispatcher may use an Operations Supervisor “as a secretary” to dictate the contents of a write-up. Salmon testified that she would only write someone up after discussing it with Gonzalez. Salmon and Gildea have never written anyone up and management has never discussed with them their authority to do so.

Of the 22 write-ups introduced into evidence, only two were signed by current dispatchers.¹⁶ A write up dated June 2, 2009 by bus dispatcher Syed Zaidi purports to give a “verbal warning” to a driver for cutting his route. A write-up dated June 10, 2010 by night dispatcher Watson indicates that he sent a driver home without pay for arriving with his bus a half-hour late and “with an attitude, being unprofessional giving me the finger.” Six other write-ups were signed by former bus or tour guide dispatchers (two in 2003 and four in 2006). Other than a total of eight write-ups signed by dispatchers over a period of seven years, the write-ups were signed by stipulated supervisors or persons whose positions at the time are unknown.

Of the eight dispatcher write-ups, five indicate that the employee at issue was sent home. In addition to the employee who was sent home for giving Watson “the finger,” three employees were sent home for refusing an assignment and one employee

¹⁶ The 22 write-ups were culled from personnel files by an unnamed Department Manager who was not called to testify. Although Murphy claimed that the 22 write-ups do not constitute all such forms in the personnel files, the record contains no foundation for his conclusion in that regard.

was sent home after he missed an assignment and was replaced for his run. The two collective bargaining agreements have virtually identical disciplinary provisions that prohibit the removal of any employee from service except for the following reasons: 1) being under the influence or taking of alcohol or drugs or any controlled substances, 2) failing to properly account for company revenue, 3) insubordination, 4) accidents and 5) assault. Neither Salmon nor Gildea have ever removed an employee from service and management has never discussed with them their alleged authority to do so.

Once prepared, write-ups are sent to one of two managers (Lee or Munoz) who are designated as hearing officers. The hearing officer conducts an investigation that might include a conversation with the dispatcher who reported the incident or might not. As per both contracts, the hearing officer may then convene a disciplinary hearing with notice to the Union of a “formal charge” or resolve the matter without a formal charge.¹⁷ The dispatcher may or may not be called to participate in the hearing or subsequent grievance proceedings.

Murphy testified that anyone, including dispatchers, can recommend that someone be hired. Hiring is done by the Human Resources department. The Human Resource department conducts a background check, drug screening, confirms the applicant’s license and otherwise insures that that applicant is qualified.

The wage of dispatchers starts at about \$10 per hour.¹⁸ Salmon has been a bus dispatcher for five years and is currently earning over \$11 per hour. Gildea was earning

¹⁷ The record does not indicate what happens to the write-up if the matter is dropped or otherwise resolved to the satisfaction of the hearing officer without a formal charge.

¹⁸ According to Employer Exhibit 4, dispatcher Joaquin Santana has been paid a salary, not an hourly wage, since he was “moved from another payroll effective 5/16/2001.” The record contains no other discussion of Santana’s salary.

\$10 per hour as a tour guide dispatcher before he transferred to a tour guide position. Gildea transferred from tour guide dispatcher to tour guide because, with tips, he makes more money in the latter capacity. Gildea testified that he is unaware of any tour guide who has transferred to the position of tour guide dispatcher. The record does not indicate that dispatchers are designated on payroll records as “supervisors” or are regularly referred to at work as supervisors. As noted above, dispatchers have signed write-ups on a line for the “Signature of Supervisor.” The record does not indicate that dispatchers have better benefits than other employees.

Gonzalez holds regular dispatcher meetings and some dispatchers receive “reasonable suspicion training,” where they are taught how to determine if an employee is under the influence of alcohol or drugs. According to Employer Exhibit 4, twelve dispatchers have been given reasonable suspicion training, including Salmon. Salmon could recall no such training.

III. LEGAL ANALYSIS

A. Supervisory Status of Bus and Tour Dispatchers

Section 2(11) of the Act defines a supervisor as:

[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

In *Providence Hospital*, 320 NLRB 717, 725 (1996), the Board held: "In enacting Section 2(11) of the Act, Congress distinguished between true supervisors who are vested with 'genuine management prerogatives,' and 'straw bosses, lead men and

set-up men' who are protected by the Act even though they perform 'minor supervisory duties.'" Id. at 724 citing *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 280-81 (quoting S. Rep. No. 105, 80th Cong., 1st Sess., 4 (1947)). The Board has cautioned "not to construe supervisory status too broadly because the employee who is deemed a supervisor is denied rights which the Act is intended to protect." *Oakwood Healthcare, Inc.*, 348 NLRB 686, 688 (2006) (quoting *Chevron Shipping Co.*, 317 NLRB 379 at 381 (1995)).

While the possession of any one of the functions enumerated in Section 2(11) is sufficient to establish supervisory status, Section 2(11) requires that a supervisor must perform those functions with independent judgment in the interest of employer, and in a manner that is not routine, clerical, isolated or sporadic. See *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 713 (2001); *NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571, 573-574 (1994); *Clark Machine Corp.*, 308 NLRB 555 (1992); *Bowne of Houston*, 280 NLRB 1222, 1223 (1986). The party alleging that an individual is a supervisor has the burden of proof and purely conclusionary evidence is not sufficient to meet that burden. *NLRB v. Kentucky River Community Care, Inc.*, supra at 712. See also *Volair Contractors, Inc.*, 341 NLRB 673, 675 (2004); *Sears, Roebuck & Co.*, 304 NLRB 193, 194 (1991). Accordingly, any lack of evidence in the record is construed against the party asserting supervisory status. *Michigan Masonic Home*, 332 NLRB 1409 (2000); *Elmhurst Extended Care Facilities, Inc.*, 329 NLRB 535, 536 fn. 8 (1999).

The Employer claims that dispatchers exercise authority to assign and responsibly direct drivers in an attempt to exclude them as statutory supervisors. The

Board has construed the term “assign” as “the act of designating an employee to a place (such as a location, department or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e., tasks, to an employee.” *Oakwood Healthcare, Inc.*, 348 NLRB at 689. Here, dispatchers do not permanently alter the overall job responsibilities, routes or schedule of employees. Dispatchers may not, for example, assign a driver to be a tour guide or give a permanent bid to an “extra board” employee. Thus, dispatchers do not “assign” work as contemplated by Section 2(11) of the Act.

The record also lacks evidence of “responsible direction” within the statutory meaning. Unlike “assignment,” such “direction” may encompass the delegation of discrete tasks as opposed to the adjustment of overall job duties. However, “responsible” direction connotes accountability by the supervisor for the failure of his/her employees to produce a desired result. Here, the record contains no evidence that dispatchers are held accountable when drivers and tour guides fail to arrive on time and begin their routes as scheduled. Dispatchers do not ride the buses and are not held accountable when drivers cut routes or fail to complete their runs in a timely manner. Indeed, the Employer introduced write-ups that reference such violations without any corresponding document concerning the “supervising” dispatcher.

The record does not reveal that dispatchers exercise independent judgment in the limited authority that they allegedly possess. Dispatchers follow a pre-determined bid and seniority system that is reflected in the collective bargaining agreements. Dispatchers do not match the skills, experience, knowledge or strengths of individual employees with specific routes or situations. At most, in a rush, a dispatcher may grab

an available employee and assign him/her to work out of order. However, the evidence does not indicate that such action is common or even permissible, as it may be grieved. Accordingly, dispatchers do not use independent judgment in the selection of drivers and tour guides that is free from outside control and not “merely routine or clerical” in nature. *Oakwood Healthcare, Inc.*, 348 NLRB at 693.

The Employer places great importance on the role that dispatchers play in the management of buses. The Employer’s emphasis is misplaced. First, Salmon testified that she calls Gonzalez regarding such matters and makes few such decisions on her own. Gonzalez was not called as a witness and no dispatcher testified to the significant and independent exercise of their alleged authority to relocate, reroute, consolidate, eliminate or accelerate bus runs.

Second, the evidence failed to establish that any complexities associated with the management of buses as an operational matter actually result in complex or difficult personnel decisions that require independent judgment. Once the decision is made to relocate, reroute, consolidate, eliminate or accelerate bus runs, by whomever, the resulting personnel decisions are largely ministerial.¹⁹ *See, Orleans Transportation Services, Inc.*, 217 NLRB 483 (1975); *Lincoln Park Nursing and Convalescent Home, Inc.*, 318 NLRB 1160, 1162 (1995); *Atlantic Paratrans of N.Y.C., Inc.*, (2008), 300 Fed.Appx. 54, 2008 WL 4876827 (2008); *Eastern Greyhound Lines*, 138 NLRB 8, 13 (1962). A driver might be advised to take his empty bus to a busier location. An “extra board” tour guide might be dispatched in order to perform an additional run. The

¹⁹ Murphy appeared to testify that night dispatchers have more discretion and operational authority than other dispatchers. However, the record contains no evidence that night dispatchers possess more authority to make the type of personnel decisions that are associated with supervisory status.

dispatcher will *not determine*, for example, that a particularly skilled driver must be sent to drive a bus that has been rerouted through narrow streets or that a particularly entertaining tour guide must be sent to work a crowded bus that has been consolidated.

The Employer contends that dispatchers are supervisors by virtue of their alleged authority to write employees up and initiate discipline. However, the record does not support such a conclusion. The record revealed only two write-ups that were issued by current dispatchers over the last three years, and one of those write-ups was issued by a night dispatcher (Watson) with authority that cannot be attributed to the others. *In re American Armored Car, Ltd.*, 339 NLRB 600, 612 (2003) (isolated reporting function does not convey supervisory status); *Lincoln Park Nursing and Convalescent Home, Inc.*, 318 NLRB 1160 (1995) (sporadic authority does not confer supervisory status).

Salmon and Gildea testified that they communicate incidents to management, but do not have the authority to issue discipline. Management has never advised them to the contrary. Neither Salmon nor Gildea have ever issued a write-up and dispatchers do not have write-up forms in their possession. Although Murphy testified that a dispatcher may dictate a write up to an Operations Supervisor, like a “secretary,” it is improbable that a superior would be used in that capacity without offering any substantive input. Moreover, Murphy did not assert any personal knowledge or foundation for this testimony. Salmon testified that she would consult a manager before writing anyone up.

Dispatchers do not have authority to effectively recommend discipline with regard to the incidents they report. Formal charges are not initiated until a hearing

officer conducts an independent investigation and schedules a disciplinary hearing. The dispatcher may or may not be consulted in connection with the investigation, the hearing or subsequent grievance proceedings. To the extent that dispatchers might make recommendations, those recommendations are not “effective.” Rather, as the Employer’s “eyes and ears,” the dispatchers merely perform a reporting function that does not establish supervisory status.²⁰ *Express Messenger Systems*, 301 NLRB 651, 653-654 (1991); *Eastern Greyhound Lines*, 138 NLRB 8 (1962); *Atlantic Paratrans of N.Y.C., Inc.*, (2008), 300 Fed.Appx. 54, 2008 WL 4876827 (2008).

The Employer contends that dispatchers are supervisors by virtue of their authority to remove an employee from duty. Like write-ups, the record does not establish that dispatchers remove employees from duty without the consent of a manager or that such authority is exercised on a regular basis. Over the last three years, only one employee (Mr. Lee) was sent home for giving the dispatcher “the finger.” Such an isolated and sporadic exercise of authority does not establish supervisory status.

²⁰ In its brief, the Employer asserts that the street dispatchers should not be included in the petitioned for unit because the Union’s Constitution prohibits union members from willfully wronging a member of the International Union. According to the Employer, faced with the possibility of being brought up on charges, the dispatchers would never issue any write-ups, allowing unit employees to freely engage in poor performance. The Employer’s assertion is misplaced in several respects. First, it must be noted that the street dispatchers do not prepare incident reports for any other employees included in the petitioned-for bargaining unit as the tour guides and bus drivers are represented in separate, previously established bargaining units. Second, having concluded that the dispatchers merely perform a reporting function and that formal charges are not initiated until a hearing officer conducts an independent investigation, I find that the Employer’s assertion that dispatchers will cease to issue write ups is, at best, speculative. In this regard, the Employer failed to present any evidence to suggest that dispatchers are routinely called upon to testify against other employees. Finally, I note that the Employer failed to present any legal authority for its assertion that a discipline clause in a Union’s International Constitution has any bearing on the proper placement of the unit employees in question.

Moreover, the Board has held that sending an employee home does not evince supervisory authority when it is limited to “instances of egregious employee misconduct” and does not require independent judgment. *Bredero Shaw*, 345 NLRB 782 (2005). Here, the collective bargaining agreements expressly limit and list the circumstances under which an employee may be removed from duty. Insubordination is one of those circumstances and giving a person “the finger” clearly qualifies. The other employees who were removed from duty either refused an assignment or, in one case, missed an assignment and was replaced. These employees were not only insubordinate but effectively removed themselves from service by turning down or not being available for work. In this context, the record has not established that dispatchers use independent judgment in removing employees from duty.

The Employer did not cite a single case involving dispatchers and did not make reference to any case that is factually similar to this one. This case is consistent with decisions that have found dispatchers not to be supervisors. *Orleans Transportation Services, Inc.*, 217 NLRB 483 (1975); *Eastern Greyhound Lines*, 138 NLRB 8 (1962); *Atlantic Paratrans of N.Y.C., Inc.*, (2008), 300 Fed.Appx. 54, 2008 WL 4876827 (2008). I therefore conclude that bus and tour guide dispatchers are not supervisors.²¹

²¹ The Employer asserted for the first time in its post-hearing brief that dispatchers are also “managerial employees.” The Employer relies on two cases, *Waukesha Lime & Stone Co., Inc.*, 145 NLRB 973 (1964) and *Virginia Manufacturing Co., Inc.*, 311 NLRB 922 (1993), which contain no finding or consideration of “managerial employees.” In any event, the record does not support a conclusion that dispatchers are “much higher in the managerial structure” than statutory supervisors and “formulate and effectuate management policies by expressing and making operative decisions of their employer.” *NLRB v. Yeshiva University*, 444 U.S. 682 (1980).

B. Inclusion of Tour Guide Dispatchers in the Unit

The Employer has taken the position that if bus and tour guide dispatchers are not found to be supervisors, tour guides must be included in the petitioned-for unit of dispatchers. For the reasons stated below, I agree.

In determining an appropriate bargaining unit, the Board seeks to fulfill the objectives of ensuring employee self-determination, promoting freedom of choice in collective bargaining, and advancing industrial peace and stability. It is well settled that the Act does not require that a unit for bargaining be the only appropriate unit or even the most appropriate unit. Rather, the Act requires only that the unit be *an* appropriate unit. *American Hosp. Ass'n v. NLRB*, 499 U.S. 606, 610 (1991); *Overnite Transportation Co.*, 322 NLRB 723 (1996); *P.J. Dick Contracting, Inc.*, 290 NLRB 150 (1988); *Morand Bros. Beverage*, 91 NLRB 409, 418 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1951). Thus, the Board's procedure for determining an appropriate unit under Section 9(b) is first to examine the petitioned-for unit. If that unit is appropriate, the inquiry ends. *Bartlett Collins Co.*, 334 NLRB 484 (2001).

The touchstone for determining whether a bargaining unit is appropriate is a community of interest analysis. The Board determines whether the employees in the petitioned-for unit share a sufficient community of interest in view of their duties, functions, supervision, and other terms and conditions of employment. *Johnson Controls, Inc.*, 322 NLRB 669, 670 (1996), *P.J. Dick Contracting, Inc.*, *supra* at 151.

Here, the bus and tour guide dispatchers exercise similar and integrated functions to insure that drivers and tour guides are dispatched to their respective buses in the proper order. Bus and tour guide dispatchers work together and communicate

with each other at common sites on the street. The record also suggests a degree of employee interchange and interchangeability. Salmon testified that she still dispatches tour guides to buses at certain locations and Murphy identified people who have worked both as bus and tour guide dispatchers. Bus and tour guide dispatchers also receive a similar hourly wage. Although bus and tour guide dispatchers report to separate immediate managers (Gonzalez and Lee), they are structurally integrated under the management of Murphy.

Given these facts, the bus and tour guide dispatchers share a strong community of interest. The employees of the Employer are already fragmented among two other bargaining units and the prospect of separating bus and tour guide dispatchers into two additional units cannot be justified. The Union is willing to participate in an election among a unit of bus and tour guide dispatchers, and I direct below an election therein.

IV. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently. Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in an economic strike who have retained their status as strikers and have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike that have retained their status as strikers but who have been permanently replaced, as well as their replacement, are eligible to vote. Unit

employees in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether or not they desire to be represented for collective bargaining purposes by **Transport Workers Union, AFL-CIO, Local 225**.

V. LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters in the unit found appropriate above shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in NLRB Region 22, 20 Washington Place, Fifth Floor, Newark, New Jersey 07102, on or before **July 26, 2010**. No extension of time to file this list shall be granted except in extraordinary circumstances nor shall the filing of a request for review operate to stay the requirement here imposed.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. The Board in Washington must receive this request by **August 2, 2010**. The request may be filed electronically through E-Gov on the agency's website, www.nlr.gov, but may not be filed by facsimile²².

Signed at Newark, New Jersey this 19th day of July, 2010.

/s/ J. Michael Lightner
J. Michael Lightner, Regional Director
National Labor Relations Board
Region 22
20 Washington Place – 5th Floor
Newark, New Jersey 07102

²² To file the request for review electronically, go to www.nlr.gov and select the E-Gov tab. Then click on the E-Filing link on the menu and follow the detailed instructions. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Agency's website, www.nlr.gov.